

APPEAL NO. 162620
FILED FEBRUARY 8, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 1, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to left tendinosis of the infraspinatus, articular surface tearing of the mid supraspinatus fibers, tiny full-thickness pinhole perforation of the cuff measuring 1 mm anterior to posterior, and mild supraspinatus fibers tendinosis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 15, 2015; (3) the claimant's impairment rating (IR) is zero percent; (4) the claimant had disability only beginning on December 15, 2015, and continuing through January 15, 2016. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI, IR, and disability. The claimant contends she met her burden of proof to prevail on all of the disputed issues. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury and that the carrier has accepted as compensable a left shoulder strain/sprain and a cervical sprain/strain. The claimant testified she was injured when the bus she was driving was struck by a street sweeper.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to left tendinosis of the infraspinatus, articular surface tearing of the mid supraspinatus fibers, tiny full-thickness pinhole perforation of the cuff measuring 1 mm anterior to posterior, and mild supraspinatus fibers tendinosis is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on December 15, 2015, is supported by sufficient evidence and is affirmed.

IR

The hearing officer's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

DISABILITY

The parties agreed to amend the disability issue at the CCH. The disability issue to be determined was stated as follows: Did the claimant have disability resulting from an injury sustained on (date of injury), from December 15, 2015, through January 5, 2016, and from January 12, 2016, through the CCH? The claimant testified that she worked light duty for employer from January 5, 2016, through January 11, 2016. The hearing officer was persuaded that the compensable injury was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wage beginning on December 15, 2015, and continuing through January 15, 2016, and at no other times through the date of the CCH.

We affirm that portion of the hearing officer's disability determination that the claimant had disability beginning on December 15, 2015, through January 5, 2016, and had disability from January 12, 2016, through January 15, 2016, but not from January 16, 2016, through the date of the CCH.

However, as noted the parties agreed to modify the disputed dates of disability at issue. The hearing officer exceeded the scope of the disability issue before her when she included the dates of January 6 through January 11, 2016. Accordingly, we reverse that portion of the hearing officer's disability determination including the dates of January 6 through January 11, 2016, as exceeding the scope of the issue before her and render a new decision striking the dates of January 6 through January 11, 2016, from the hearing officer's disability determination.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to left tendinosis of the infraspinatus, articular surface tearing of the mid supraspinatus fibers, tiny full-thickness pinhole perforation of the cuff measuring 1 mm anterior to posterior, and mild supraspinatus fibers tendinosis.

We affirm the hearing officer's determination that the claimant reached MMI on December 15, 2015.

We affirm the hearing officer's determination that the claimant's IR is zero percent.

We affirm that portion of the hearing officer's disability determination that the claimant had disability beginning on December 15, 2015, through January 5, 2016, and

had disability from January 12, 2016, through January 15, 2016, but not from January 16, 2016, through the date of the CCH.

We reverse that portion of the hearing officer's disability determination including the dates of January 6 through January 11, 2016, as exceeding the scope of the issue before her and render a new decision striking the dates of January 6 through January 11, 2016, from the hearing officer's disability determination.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge